IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 713 OF 1993

Union of India,)
represented by the General)
Managers of Central and)
Southern Railways, Bombay V.T.)... Appellants.

Versus

M/s. Daguji Bhaurao,)
Manmad, District Nasik.)... Respondent.

Mr. A. N. Samant for the Appellants.
Mr. G. J. Mohan Rao for the Respondent.

CORAM : ANOOP V. MOHTA, J.

DATED : 6TH DECEMBER, 2005.

J U D G E M E N T :

This is an appeal filed by the Union of India for the General Managers, Central and Southern Railways, Bombay V. T. / original respondents and thereby

challenged the judgment and order passed by the Railway Claims Tribunal, Bombay (Claims Tribunal) whereby orig. respondent / appellants have been ordered to pay Rs.505.40 to the respondent / applicant with interest at the rate of 10% per annum from the date of application till realisation of the amount and proportionate costs.

2. Heard learned Counsel appearing for the parties. As contended the liability, if any, can be fastened upon the Northern Railways, Bombay. That claim for damages need to be only against the Northern Railways and not against the Central and Southern Railways, Bombay V. T. and therefore, the claim as filed against the two railways cannot be sustained. This submission was not disputed by the respondent's counsel.

3. The notice under Section 78B of the Indian Railways Act read with Section 80 of the Code of Civil Procedure was served upon the Appellants on 13th September, 1974. As the goods in the present case were damaged because of inaction on the part of the northern railway and not by other railways. A suit was filed on 3rd August, 1976 before the Civil Judge,

Junior Division, Nandgaon for compensation on account of damages to the consignments. The Court after considering the rival contentions and material evidence on record, granted decree in favour of the respondent.

4. Both the learned advocates have pointed at the judgment passed by the learned single Judge of this Court in First Appeal No.1136 of 1992 **(Union of India v/s M/s. Eknath Khemchand)** dated 6th May, 2005, whereby on identically placed facts and circumstances and based on the similar provisions of Railways Act and Rules made thereunder in reference to the defence of RRS issued by the Railways *"said to contain"* as contemplated under the Railways Act observed as under:

> "9. Railways can file defence of "said to contain" when railways dispute the quantity entrusted to them and accept the representation of the consignor in that regard for the purpose of freight charges. However, the claim in this case is on the basis of actual damage certificate and if the actual damage suffered can be

> ascertained on the basis of the evidence on record, then question as to how much quantity was entrusted to the railways becomes secondary. Both the damage certificate show that railways were in a position to make assessment of the damages in respect of the bags, number of bags actually damaged under both the invoices, the Tribunal has accepted that weight of the each bag was 40 Kgs. therefore, in the circumstances the defence of "said to contain" is not available to the appellants."

5. In view of this in the present case also the said defence is not available to the appellants. Both the parties agreed that this judgment **M/s. Eknath Khemchand (supra)** covers and governs the present case also. Therefore, without going further to discuss the issues, in view of agreed position this appeal is partly allowed.

6. In so far as interest part is concerned, the learned advocate appearing for the respondent conceded that the rate of interest be replaced to 4% per annum

instead of 10% per annum as awarded. In view of this the following order :

(a) The appeal is partly allowed.

(b) The principal amount will carry interest at the rate of 4% per annum from the date of application till realisation or payment.

(c) The liability of payment will be of the General Manager, Central Railway and not of other railways.

(d) The respondent shall be permitted to withdraw the amount as per the present order.

(e) The amount that is found in excess in view of this order, shall be returned to the appellant.

(f) There shall be no order as to costs.

Sd/-

(ANOOP V. MOHTA, J.)